

ARTICLE I. FULL NAME OF THE AGREEMENT.

The Agreement established hereby shall be entitled the "West Coast MTO Agreement" (hereinafter "Agreement").

ARTICLE II. AUTHORITY OF THE AGREEMENT.

(a) **AUTHORITY.** The parties are authorized to exchange information, discuss, agree upon, establish, revise, maintain, cancel and enforce terminal rates (excluding the inland division or inland portion of through rates), charges, rules, regulations, procedures, practices, terms and conditions relating to cargo moving in the foreign commerce of the United States concerning:

(i) matters involving or affecting the interchange of cargo, chassis and containers with motor carriers and/or rail carriers including security, access control, gate rules, appointment systems, turn times, truck idling, on-terminal equipment use and/or storage, measures to reduce vehicle congestion at terminals and surrounding areas, demurrage, detention, billing, compliance with interchange/leasing arrangements, indemnification and limitations of liability, and resolution of disputes and complaints and costs relating to any of the above;

(ii) off-peak operations at marine terminal facilities in California, including: measures to encourage use of off-peak hours, recovery of costs of establishing and maintaining off peak operations, hours and days of service, services and facilities to be made available, and measures to facilitate efficient payment, collection and distribution of any funds collected with regard to off-peak operation. Any measures, activities or charges adopted pursuant to this sub-paragraph may be applied with respect to peak hour shipments in furtherance of or in connection with an off-peak hours program;

(iii) the development, acquisition and use of technology related to the safe, secure and efficient transportation of cargo including, but not limited to, RFID technology;

(iv) the implementation and/or administration of measures with respect to the operation of marine terminals mandated or established by one or more ports, federal, state or local governments, or other governmental authorities or agencies, including standards and criteria for cargo interests, inland carriers, or others seeking access to port or marine

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(v) agree upon and make available to the public the terms of a common marine terminal operator schedule and/or the parties' individual marine terminal operator schedules applicable to shippers and other cargo interests and their agents or contractors, inland carriers, leasing companies or other equipment providers, and other carriers or persons having control over or beneficial interest in the cargo with respect to the authorities contained in Articles II(a)(i) – (vi); PROVIDED, however, that the authority provided under Article II(a)(i) –(vi) shall not include agreement on a general security assessment or surcharge intended to recover a party's overall or systemic expenditures on security (as distinct from a charge associated with a specific activity (e.g., RFID or TWIC); and further PROVIDED, that no common marine terminal operator schedule or common terms agreed upon by the parties to this Agreement pursuant to the terms of this Agreement and which are to be set forth in individual marine terminal operator schedules shall become effective until thirty (30) days after such schedule has been provided to the Federal Maritime Commission.

(c) **LIMITATION ON AUTHORITY.** Nothing in this Agreement shall be construed to alter or supersede the rights and obligations of the parties under any applicable collective bargaining agreement.

(d) **MEETINGS AND DISCUSSIONS.**

(i) The parties or any two or more of them are authorized to conduct meetings and hold discussions and reach voluntary agreement related to the subjects set forth in subparagraph (a) above, either in person or via electronic means, and either as the entire group or through subcommittees or subgroups.

(ii) Pursuant to the foregoing authority, the parties shall establish an Executive Committee consisting of one representative from each of the five (5) parties having the highest number of Revenue Units (as hereinafter defined) and one representative chosen from among the other parties. The Executive Committee shall develop recommendations for consideration and approval of the parties.

(iii) For purposes of this Agreement, "Revenue Units" shall mean the total loaded TEUs (or equivalent revenue units as defined under Pacific Maritime Association rules and guidelines) handled and moving through the parties' terminals (including those of affiliates listed in Appendix A hereto) including rail and gate moves, but excluding transshipment, inter-terminal and domestic moves, during the last full calendar year for which data are available. The Revenue Units of the parties shall be adjusted annually when the data for the most recent full calendar year become available. Until such time as the parties may otherwise agree, the parties' cargo volumes shall be determined based on data provided by the Pacific Maritime Association.